CANADA

PROVINCE OF QUEBEC
DISTRICT OF MÉGANTIC

NO: 480-06-000001-132

(Class Action)
SUPERIOR COURT

YANNICK GAGNÉ

and

GUY OUELLET

and

SERGE JACQUES

and

LOUIS-SERGES PARENT

Petitioners

-vs.-

RAIL WORLD, INC., legal person duly constituted, having its head office at 6400 Shafer Court, Suite 275, City of Rosemont, State of Illinois, 60018, USA

and

RAIL WORLD HOLDINGS, LLC, legal person duly constituted, having its head office at 6400 Shafer Court, Suite 275, City of Rosemont, State of Illinois, 60018, USA

and

MONTREAL MAINE & ATLANTIC RAILWAY LTD., legal person duly constituted, having its head office at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

EARLSTON ASSOCIATES L.P., legal person duly constituted, having its head office at 8600 W Bryn Mawr Ave 500N, City of Chicago, State of Illinois, 60631, USA

and

PEA VINE CORPORATION, legal person duly constituted, having its head office at 2899 Sherman Ave, City of Monte Vista, State of Colorado, 81144, USA

and

MONTREAL, MAINE & ATLANTIC CORPORATION, legal person duly constituted, having its head office at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

MONTREAL, MAINE & ATLANTIC CANADA COMPANY, legal person duly constituted, having its head office at 1959 Upper Water Street, Suite 800, City of Halifax, Province of Nova Scotia, B3J 2X2

and

EDWARD BURKHARDT, service at 6400 Shafer Court, Suite 275, City of Rosemont, State of Illinois, 60018, USA

and

ROBERT GRINDROD, service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

GAINOR RYAN, service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

DONALD GARDNER, JR., service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

JOE MCGONIGLE, service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

CATHY ALDANA, service at 6400 Shafer Court, Suite 275, City of Rosemont, State of Illinois, 60018, USA

and

THOMAS HARDING, service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

IRVING OIL LIMITED, legal person duly constituted, having its head office at 10 Sydney Street, City of St. John, Province of New Brunswick, E2L 4K1

and

IRVING OIL COMPANY, LIMITED, legal person duly constituted, having its head office at 10 Sydney Street, City of St. John, Province of New Brunswick, E2L 4K1

and

IRVING OIL OPERATIONS GENERAL PARTNER LIMITED, legal person duly constituted, having its head office at 1 Germain Street, Suite 1700, City of St. John, Province of New Brunswick, E2L 4V1

and

IRVING OIL OPERATIONS LIMITED, legal person duly constituted, having its head office at 1 Germain Street, Suite 1700, City of St. John, Province of New Brunswick, E2L 4V1

and

IRVING OIL COMMERCIAL G.P., legal person duly constituted, having its head office at 1 Germain Street, Suite 1700, City of St. John, Province of New Brunswick, E2L 4V1

and

WORLD FUEL SERVICES CORP., legal person duly constituted, having its head office at 9800 NW 41st Street, Suite 400, City of Miami, State of Florida, 33178, USA

and

WORLD FUEL SERVICES, INC., legal person duly constituted, having its head office at 9800 NW 41st Street, Suite 400, City of Miami, State of Florida, 33178, USA

and

WORLD FUEL SERVICES CANADA, INC., legal person duly constituted, having its head office at 9800 NW 41st Street, Suite 400, City of Miami, State of Florida, 33178, USA

and

DAKOTA PLAINS HOLDINGS, INC., legal person duly constituted, having its head office at 294 Grove Lane East, City of Wayzata, State of Minnesota, 55391, USA

and

DAKOTA PLAINS MARKETING, LLC, legal person duly constituted, having its head office at 294 Grove Lane East, City of Wayzata, State of Minnesota, 55391, USA

and

DPTS MARKETING LLC, legal person duly constituted, having its head office at 294 Grove Lane East, City of Wayzata, State of Minnesota, 55391, USA

and

DAKOTA PLAINS TRANSLOADING, LLC, legal person duly constituted, having its head office at 294 Grove Lane East, City of Wayzata, State of Minnesota, 55391, USA

and

DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC, legal person duly constituted, having its head office at 294 Grove Lane East, City of Wayzata, State of Minnesota, 55391, USA

and

WESTERN PETROLEUM COMPANY, legal person duly constituted, having its head office at 9531 West 78th Street,

Cabroile Centre, Suite 102, Eden Prairie, State of Minnesota, 55344, USA

and

PETROLEUM TRANSPORT SOLUTIONS, LLC, legal person duly constituted, having its head office at 9531 West 78th Street, Cabroile Centre, Suite 102, City of Eden Prairie, State of Minnesota, 55344, USA

and

STROBEL STAROSTKA TRANSFER, LLC, legal person duly constituted, having its head office at 106 South Green Street, City of Clarks, State of Nebraska, 68628, USA

and

MARATHON OIL CORPORATION, legal person duly constituted, having its head office at 5555 San Felipe Road, City of Houston, State of Texas, 77056, USA

and

SLAWSON EXPLORATION COMPANY, INC., legal person duly constituted, having its head office at 727 N.Waco, Suite 400, City of Wichita, State of Kansas, 67203, USA

and

UNION TANK CAR COMPANY, legal person duly constituted, having its head office at 175 West Jackson Blvd., City of Chicago, State of Illinois, 60604, USA

and

TRINITY INDUSTRIES, INC., legal person duly constituted, having its head

office at 2525 Stemmons Freeway, City of Dallas, State of Texas, 75207, USA

and

TRINITY RAIL GROUP, LLC, legal person duly constituted, having its head office at 2525 Stemmons Freeway, City of Dallas, State of Texas, 75207-2401, USA

and

TRINITY RAIL LEASING 2012 LLC, legal person duly constituted, having its head office at 2525 Stemmons Freeway, City of Dallas, State of Texas, 75207-2401, USA

and

GENERAL ELECTRIC RAILCAR SERVICES CORPORATION, legal person duly constituted, having its head office at 161 North Clark Street, City of Chicago, State of Illinois, 60601, USA

and

CANADIAN PACIFIC RAILWAY COMPANY, legal person duly constituted, having its head office at 401-9th Avenue SW, Suite 500, City of Calgary, Province of Alberta, T2P 4Z4

Respondents

and

XL INSURANCE COMPANY LIMITED, legal person duly constituted, having its principal establishment at 8 Street Stephen's Green, City of Dublin, 2, Ireland

and

XL GROUP PLC, legal person duly constituted, having its principal establishment at One Bermudiana Road, City of Hamilton, HM, 08, Bermuda

Mises-en-cause

THIRD AMENDED MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
&
TO ASCRIBE THE STATUS OF REPRESENTATIVE
(Art. 1002 C.C.P. and following)

TO THE HONOURABLE MR. JUSTICE MARTIN BUREAU, J.S.C., SITTING IN AND FOR THE DISTRICT OF MÉGANTIC, YOUR PETITIONERS STATE AS FOLLOWS:

I. GENERAL PRESENTATION

A) The Action

1. Petitioners wish to institute a class action on behalf of the following group, of which they are members, namely:

    - all persons and entities (natural persons, legal persons established for a private interest, partnerships or associations as defined in article 999 of the Code of Civil Procedure of Quebec) residing in, owning or leasing property in, operating a business in and/or were physically present in Lac-Mégantic [including their estate, successor, spouse or partner, child, grandchild, parent, grandparent and sibling], who have suffered a loss of any nature or kind relating to or arising directly or indirectly from the train derailment that took place on July 6, 2013 in Lac-Mégantic (the "Train Derailment"), or any other group to be determined by the Court;

B) The Respondents

2. Please note that the Respondents presented herein are as known currently. As new facts emerge throughout the various investigations of the governmental bodies, the Petitioners reserve their right to amend so as to update this section;

The Corporate Rail World Respondents

3. Respondent Rail World, Inc. (“Rail World”) is an American rail transport holding corporation with its head office in Rosemont, Illinois. It is a railroad management and consulting company. It is the parent company of Montreal, Maine and Atlantic Railway Ltd. (“MMAR”) and its president and Chief Executive Officer is Respondent Edward Burkhardt;

4. Respondent Rail World Holdings, LLC (“Rail World Holdings”) is an American corporation with its head office in Rosemont, Illinois. The company holds railway investments around the world. Respondent Edward Burkhardt serves as the President of the company. Rail World Holdings is not a distinct corporate entity performing autonomous business activities, but is instead an entity created to serve as a holding company for other corporate entities and is dominated and controlled by its parent company, Rail World;

5. Respondent MMAR is an American corporation with its head office in Hermon, Maine. It operates a Class II freight railroad in the United States of Maine and Vermont and in the Canadian provinces of Quebec and New Brunswick. MMAR owns the 1200 kilometer regional railway crossing Maine, Vermont, Quebec and New Brunswick and it also owns and leases locomotives and train cars travelling *inter alia* between Montreal, Quebec and Lac-Mégantic, Quebec. It is a wholly-owned subsidiary of Rail World and Respondent Edward Burkhardt serves as the Chairman of the Board. It is a wholly-owned subsidiary of Montreal, Maine and Atlantic Corporation (“MMAC”), the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1A.** MMAR is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Rail World, either directly or indirectly through Rail World Holdings and/or MMAC;

6. Respondent Earlston Associates L.P. (“Earlston”) is an American corporation with its head office in Chicago, Illinois. Its majority shareholder is Respondent Edward Burkhardt, who owns 72.78% of the corporate stock. It is the parent company of MMAC;

7. Respondent Pea Vine Corporation (“Pea Vine”) is an American corporation with its head office in Vista, Colorado. It operates in the rail transportation industry as a railroad line-haul operator. Respondent Edward Burkhardt is the President of the company;

8. Respondent MMAC is an American corporation with its head office in Hermon, Maine. It is a wholly-owned subsidiary of Respondent Earlston. MMAC is not a distinct corporate entity performing autonomous business

activities, but is instead an entity wholly dominated and controlled by its parent company, Earlston;

9. Respondent Montreal, Maine & Atlantic Canada Company ("MMA Canada") is a wholly-owned subsidiary of MMAR, the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1B**. MMA Canada is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Rail World, directly and/or through the other Rail World Respondents;

9.1 Rail World controlled and dominated its subsidiaries directly and/or through its operating and subsidiary companies, including Rail World Holdings, and MMAC, and MMAR. Respondents were operated as one economic unit or a single group enterprise as follows:

a) Each of the seven companies is a parent or subsidiary of the others or is an affiliate of the others;

b) Each of the seven companies is the agent of the others;

c) All seven companies have officers and directors in common, including most importantly, the Respondent Edward Burkhardt as explained below;

d) The acts and omissions set out herein were done by the Rail World Respondents in pursuit of their common enterprise; and

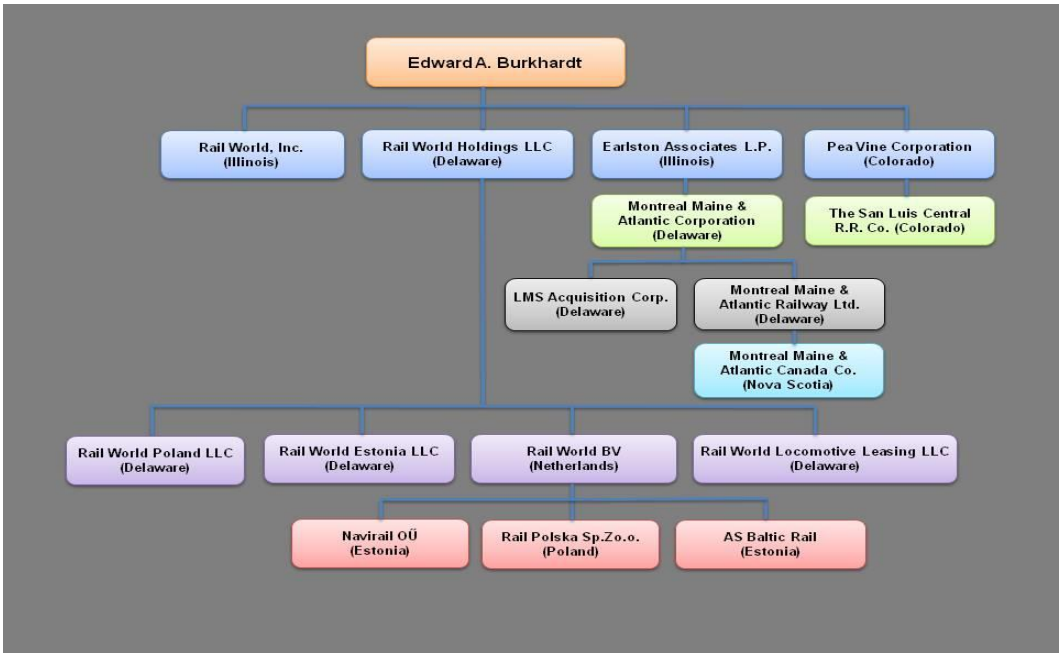
e) All of the Rail World Respondents were under the control and direction, including all aspects of their business and operations, of the Respondent Rail World and its officers and directors and its subsidiaries as described herein;

<u>The Individual Rail World Respondents</u>

10. Respondent Edward Burkhardt ("Burkhardt") is the President of Respondents Rail World, Rail World Holdings and Pea Vine Corporation. Mr. Burkhardt is the majority shareholder of Respondent Earlston and he serves as the Chairman of the Board of Directors at Respondent MMAR. Respondent Edward Burkhardt is responsible for the implementation and enforcement of policies and/or for the failure to implement and to enforce proper policies and procedure;

11. As is plainly illustrated below, Respondent Edward Burkhardt is the principal director of, and exercises real and effective control of, the other Respondents, in effect functioning as the alter ego of the entire operation. The other officers and management of the Rail World Respondents and its

affiliates effectively controlled all aspects of the business and operations of all of the Rail World Respondents as described herein;



12. Respondents Edward Burkhardt, Robert Grinrod (President and Chief Executive Officer of MMAR), Gainor Ryan (Vice-President of Human Resources of MMAR), Donald Gardner, Jr. (Vice-President Finance and Administration and Chief Financial Officer at MMAR), Joe McGonigle (Vice-President of MMAC) and Cathy Aldana (Vice-President of Research and Administration at Rail World) are collectively, the controlling minds of the Corporate Rail World Respondents;

13. Respondent Thomas Harding was the conductor of the Train;

14. Mis-en-cause XL Insurance Company Limited is a global insurance company with its head office in Ireland. It is the liability insurer of Respondent MMAR;

15. Mis-en-cause XL Group PLC is a global insurance company with its head office in Bermuda. It is the liability insurer of Respondent MMAR;

16. (…)

17. Given the close ties between the Corporate Rail World Respondents and the Individual Rail World Respondents and considering the preceding, all Corporate Rail World Respondents and Individual Rail World Respondents are solidarily liable for the acts and omissions of the other. Unless the context indicates otherwise, all Corporate Rail World Respondents will be referred to as the “Rail World Companies” and the Individual Rail World

Respondents will be referred to as the "Senior Executive Team" for the purposes hereof. Collectively, they will be referred to as the "Rail World Respondents";

The Irving Oil Respondents

17.1 Respondent, Irving Oil Limited ("Irving Oil") is a corporation incorporated pursuant to the laws of New Brunswick with its head office located in St. John, New Brunswick. At all material times, Irving Oil either directly or indirectly through an agent or subsidiary purchased and had a proprietary or equitable interest in and control of the shale liquids, sometimes referred to as "shale oil" or "crude oil" (the "Shale Liquids") that were in the process of being shipped by MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013 via the train that derailed in Lac Mégantic on July 6, 2013, as described herein ("the Train");

17.2 Respondent, Irving Oil Company, Limited ("Irving Oil Co.") is a corporation incorporated pursuant to the laws of New Brunswick with its head office located in St. John, New Brunswick. At all material times, Irving Oil Co. either directly or indirectly through an agent or subsidiary purchased and/or owned the Shale Liquids that were in the process of being shipped by MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013 on the Train. Irving Oil Co. directly or indirectly, through an agent or subsidiary, contracted with MMAR for the shipment of the Shale Liquids and was responsible for the decision to use and/or was aware of the use of the United States Department of Transportation ("DOT")-111 tankers ("the Tankers") to ship the Shale Liquids. Irving Oil Co. is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Irving Oil, the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1C**;

17.3 Respondent, Irving Oil Operations General Partner Limited ("Irving Oil GPL") is a corporation incorporated pursuant to the laws of New Brunswick with its head office located in St. John, New Brunswick. At all material times, Irving Oil GPL either directly or indirectly through an agent or subsidiary purchased and/or owned the Shale Liquids that were in the process of being shipped by MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013 on the Train. Irving Oil GPL directly or indirectly, through an agent or subsidiary, contracted with MMAR for the shipment of the Shale Liquids on the Train and was responsible for the decision to use and/or was aware of the use of the Tankers to ship the Shale Liquids. Irving Oil GPL is not a distinct corporate entity performing autonomous business activities, but is instead

an entity wholly dominated and controlled by its ultimate parent company, Irving Oil;

17.4 Respondent, Irving Oil Operations Limited ("Irving Oil Operations") is a corporation incorporated pursuant to the laws of New Brunswick with its head office in St. John, New Brunswick. At all material times, Irving Oil Operations either directly or indirectly through an agent or subsidiary purchased and/or owned the Shale Liquids that were in the process of being shipped by MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013 on the Train. Irving Oil Operations directly or indirectly, through an agent or subsidiary, contracted with MMAR for the shipment of the Shale Liquids, and was responsible for the decision to use and/or was aware of the use of the Tankers to ship the Shale Liquids on the Train. It is a wholly-owned subsidiary of Irving Oil, and is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Irving Oil, the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1D** (…);

17.4.1 Respondent, Irving Oil Commercial G.P. ("Irving Oil Commercial") is a corporation incorporated pursuant to the laws of New Brunswick with its head office in St. John, New Brunswick. At all material times, Irving Oil Commercial, either directly or indirectly through an agent or subsidiary, purchased and/or owned the Shale Liquids that were shipped by Canadian Pacific Railway and MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013 on the Train. Irving Oil Commercial, directly or indirectly, through an agent or subsidiary, contracted with Canadian Pacific Railway and MMAR for the shipment of the Shale Liquids and, was responsible for the decision to use and/or was aware of the use of, the Tankers to ship the Shale Liquids on the Train. Irving Oil Commercial is a wholly-owned subsidiary of Irving Oil and is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Irving Oil, the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1D.1**;

17.5 At all relevant times, the Respondents, Irving Oil, Irving Oil Co., Irving Oil GPL, (…) Irving Oil Operations and Irving Oil Commercial G.P (hereinafter collectively "Irving Oil") acted on behalf of each other and exercised control over their collective subsidiaries and corporate divisions directly or through their subsidiaries with regard to the shipment of the Shale Liquids on the Train. As such, each Irving Oil Respondent is individually as well as solidarily liable to the Petitioners and to the members of the Class for their injuries, losses and damages;

17.5.1 At all relevant times the Irving Oil Respondents had a duty to the Petitioners and to the members of the Class to undertake due diligence to ensure that the Tankers and locomotives that were used to ship the Shale Liquids on the Train were safe and in conformance with all applicable safety and regulatory standards for the shipment of highly flammable and toxic petroleum products;

The World Fuel Respondents

17.5.2 Respondent, World Fuel Services Corp. is a corporation incorporated pursuant to the laws of Florida with its head office located in Miami, Florida. At all material times World Fuel Services Corp. or one of its subsidiaries was the seller and/or owner of the Shale Liquids that were shipped by Canadian Pacific Railway and MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick, and leased the Tankers used to carry the oil. World Fuel Services Corp. exercised control over its subsidiaries and corporate divisions and was responsible for the decision to use and/or was aware of the use of the Tankers to ship the Shale Liquids on the Train;

17.6 Respondent, World Fuel Services, Inc. is a corporation incorporated pursuant to the laws of Florida with its head office located in Miami, Florida. At all material times World Fuel Services, Inc., either directly or indirectly through one of its subsidiaries and/or in a joint venture with Dakota Plains Holdings, Inc., operated trucks which loaded hydrocarbon liquids (including the Shale Liquids) received from well-sites and transported those liquids to a transload facility[1] adjacent to New Town, North Dakota. World Fuel Services Inc. purchased oil from, *inter alia,* Marathon Oil Corporation and Slawson Exploration Company, Inc. and was thereafter the seller and/or owner of the Shale Liquids that were (…) shipped by Canadian Pacific Railway and MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick and leased the Tankers used to carry the Shale Liquids on the Train. World Fuel Services, Inc. is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, World Fuel Services Corp;

17.7 Respondent, World Fuel Services Canada, Inc. is a corporation incorporated pursuant to the laws of British Columbia with its head office located in Miami, Florida. At all material times World Fuel Services Canada, Inc. either directly or indirectly through one of its subsidiaries was the seller and/or owner of the Shale Liquids that were (…) shipped by Canadian Pacific Railway and MMAR from North Dakota to Irving Oil's

[1] "Transloading" is the process of transferring product from one mode of transportation to another, in this case, transferring the Shale Liquids were "transloaded" from truck to rail car.

refinery in St. John, New Brunswick, and leased the Tankers used to carry the Shale Liquids on the Train. World Fuel Services Canada, Inc. is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, World Fuel Services Inc., the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1E**;

17.8 Respondent Dakota Plains Holdings, Inc. ("Dakota Plains Holdings") is a corporation incorporated pursuant to the laws of Nevada with its head office located in Wayzata, Minnesota. At all material times, Dakota Plains Holdings was a subsidiary of and/or affiliate of and/or in a joint venture with (…) World Fuel Services Corp. and/or World Fuel Services, Inc., and/or World Fuel Services Canada, Inc., and/or engaged in a joint venture with World Fuel Services Corp. and/or World Fuel Services, Inc., and/or World Fuel Services Canada, Inc. and/or Dakota Plains Holdings and operated trucks which loaded hydrocarbon liquids (including the Shale Liquids) at well-sites and transported those liquids to a transload facility adjacent to New Town North Dakota. Dakota Plains Holdings, through a joint venture, purchased oil from, *inter alia,* Marathon Oil Corporation and Slawson Exploration Company, Inc. and thereafter was the seller, owner and shipper of the Shale Liquids that were (…) shipped by Canadian Pacific Railway and MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick, and leased the Tankers used to carry the Shale Liquids on the Train;

17.8.0.1 Respondent Dakota Plains Marketing, LLC ("Dakota Plains Marketing") is a corporation incorporated pursuant to the laws of Minnesota with its head office located in Wayzata, Minnesota. At all material times, Dakota Plains Marketing was a wholly-owned subsidiary of and/or affiliate of and/or in a joint venture with Dakota Plains Holdings. Dakota Plains Marketing currently holds 50% of the assets of DPTS Marketing LLC, as described;

17.8.0.2 Respondent DPTS Marketing LLC ("DPTS Marketing") is a corporation incorporated pursuant to the laws of Minnesota with its head office located in Wayzata, Minnesota. At all material times, DPTS Marketing was a joint venture of Dakota Plains Marketing and Petroleum Transport Solutions, LLC. DPTS Marketing was responsible for the purchase, sale, storage, transport, and marketing of hydrocarbons produced within North Dakota to or from refineries and other end-users or persons and to conduct trading activities;

17.8.0.3 Respondent Dakota Plains Transloading, LLC ("Dakota Plains Transloading") is a corporation incorporated pursuant to the laws of Minnesota with its head office located in Wayzata, Minnesota. At all

material times, Dakota Plains Transloading was a wholly-owned subsidiary of Dakota Plains Holdings. Dakota Plains Transloading is responsible for the purchase, sale, storage, transport, and marketing of hydrocarbons produced within North Dakota to or from refineries and other end-users or persons and to conduct trading activities, including the loading of hydrocarbons onto the Tankers in the facility located in New Town, North Dakota;

17.8.0.4 Respondent Dakota Petroleum Transport Solutions, LLC ("Dakota Petroleum Transport") is a corporation incorporated pursuant to the laws of Minnesota with its head office located in Wayzata, Minnesota. At all material times, Dakota Petroleum Transport was a wholly-owned subsidiary of Dakota Plains Holdings. Dakota Petroleum Transport is a joint venture of Dakota Plains Transloading and Petroleum Transport Solutions, LLC which is responsible for the purchase, sale, storage, transport, and marketing of hydrocarbons produced within North Dakota to or from refineries and other end-users or persons and to conduct trading activities including the loading of hydrocarbons onto the Tankers in the facility located in New Town, North Dakota;

17.8.1 Respondent Western Petroleum Company ("Western Petroleum") is a corporation incorporated pursuant to the laws of Minnesota with its head office located in Eden Prairie, Minnesota. At all material times, Western Petroleum Company was a subsidiary of World Fuel Services Corp. and/or World Fuel Services, Inc., and/or World Fuel Services Canada, Inc. Western Petroleum Company leased the Tankers which transported the Shale Liquids from North Dakota to Irving Oil's refinery in St. John, New Brunswick from third-party lessors, as identified below;

17.8.2 Respondent Petroleum Transport Solutions, LLC ("Petroleum Transport Solutions") is a corporation incorporated pursuant to the laws of Minnesota with its head office located in Eden Prairie, Minnesota. At all material times, Petroleum Transport Solutions was a wholly-owned subsidiary of World Fuel Services Corp. and/or World Fuel Services, Inc., and/or World Fuel Services Canada, Inc. Petroleum Transport Solutions holds 50% of the assets of DPTS Marketing;

17.8.3 Respondent Strobel Starostka Transfer LLC ("Strobel Starostka") is a corporation incorporated pursuant to the laws of Nebraska with its head office located in Clarks, Nebraska. At all material times, Strobel Starostka was a party to a contract with Dakota Petroleum Transport and transloaded the Shale Liquids into the Tankers that were shipped by Canadian Pacific Railway and MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick;

17.8.4 Respondents Dakota Plains Holdings, Dakota Plains Marketing, DPTS Marketing, Dakota Plains Transloading, Dakota Petroleum Transport, Western Petroleum, Petroleum Transport Solutions and Strobel Starostka collectively owned and operated trucks that loaded produced hydrocarbon liquids (including the Shale Liquids) at well-sites and transported those liquids to a transload facility adjacent to New Town, North Dakota, and were thereafter the sellers, owners and shippers of the Shale Liquids that were shipped by Canadian Pacific Railway and MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick, and were the lessees of the Tankers used to carry the Shale Liquids on the Train;

17.9 At all relevant times, the Respondents, World Fuel Services Corp., World Fuel Services, Inc., World Fuel Services Canada, Inc., Dakota Plains Holdings (…), DPTS Marketing, Dakota Plains Marketing, Dakota Plains Transloading, Dakota Petroleum Transport, (…) Western Petroleum (…), Petroleum Transport Solutions, and Strobel Starostka (hereinafter collectively "World Fuel") acted on behalf of each other and exercised control over their collective subsidiaries and corporate divisions either directly or through their subsidiaries with regard to the shipment of the Shale Liquids on the Train. As such, each World Fuel Respondent is individually as well as solidarily liable to the Petitioners and to the members of Class for their injuries, losses and damages, the whole as appears more fully from a copy of the 10-Q SEC Filing of Respondent Dakota Plains Holding, Inc., produced herein as **Exhibit R-1E.1**;

17.10 Unless the context indicates otherwise, all Irving Oil Respondents and World Fuel Respondents will be referred to collectively as the "Oil Respondents" for the purposes hereof;

The Oil Producer Respondents

17.10.0.1 Respondent, Marathon Oil Corporation ("MRO") is a multinational oil and gas exploration and production corporation incorporated pursuant to the laws of Delaware, with its head office located in Houston, Texas. At all material times, MRO had assets valued at $35 billion and annual revenues in excess of $15 billion. MRO, directly or, through one of its subsidiaries, owned and/or operated and/or had the drilling rights for the oil wellheads in the Bakken Region of North Dakota that produced the Shale Liquids (hereinafter, the "Wellheads");

17.10.0.2 At all material times, MRO produced the Shale Liquids that were shipped from North Dakota to Irving Oil's refinery in St. John, New Brunswick. At all material times, World Fuel Services listed MRO among the sellers/offerors of the crude oil purchased immediately prior to the Train Derailment;

17.10.0.3 At all material times, MRO, as the owner of/operator of/holder of drilling rights to the Wellheads, was an "offeror of hazardous material for transportation in commerce" within the meaning of section 171.1 of the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration's Code of Federal Regulations Subchapter C sections 171-180 ("HMR") and was responsible for determining the hazard class of the hazardous materials and placing the appropriate placards denoting the risk designations on the holding tanks at the Wellheads which held the Shale Liquids until they were transferred to the Tankers for transport at the transload facility. MRO's hazard classification of the Shale Liquids would ultimately indicate to the World Fuel Respondents, the Oil Respondents and the Rail Respondents, the hazard class of the Shale Liquids;

17.10.0.4 Respondent, Slawson Exploration Company, Inc. ("Slawson") is an oil and gas exploration and production corporation incorporated pursuant to the laws of Kansas, with its head office in Kansas. At all material times, Slawson directly, or through one of its subsidiaries, owned and/or operated and/or had the drilling rights for the Wellheads;

17.10.0.5 At all material times, Slawson produced the Shale Liquids that were being shipped from North Dakota to Irving Oil's refinery in St. John, New Brunswick. At all material times, World Fuel Services listed Slawson among the sellers/offerors of the crude oil purchased immediately prior to the Train Derailment;

17.10.0.6 At all material times, Slawson, as the owner of/operator of/holder of drilling rights to the Wellheads, was an "offeror of hazardous material for transportation in commerce" within the meaning of section 171.1 of the HMR and was responsible for determining the hazard class of the hazardous materials and placing the appropriate placards denoting the risk designations on the holding tanks at the Wellheads which held the Shale Liquids until they were transferred to the Tankers for transport at the transload facility. Slawson's hazard classification of the Shale Liquids would ultimately indicate to the World Fuel Respondents, the Oil Respondents and the Rail Respondents, the hazard class of the Shale Liquids;

17.10.0.7 Unless the context indicates otherwise, MRO and Slawson will be referred to collectively as the "Oil Producer Respondents" for the purposes hereof;

The Lessor Respondents

17.10.1 Respondent Union Tank Car Company, ("Union Tank"), is a corporation incorporated pursuant to the laws of Delaware, with its head office located in Chicago, Illinois. At all material times, Union Tank was the lessor/supplier of the Tankers leased by Western Petroleum which transported Shale Liquids from New Town, North Dakota towards St. John, New Brunswick on July 6, 2013 on the Train. Union Tank was either responsible for or was aware of the decision to use the Tankers to ship the Shale Liquids on the Train and of the decision to transport the Tankers along inadequate and deficient railways operated by the Rail World Respondents, as described herein;

17.10.2 Respondent Trinity Industries, Inc., ("Trinity Industries"), is a corporation incorporated pursuant to the laws of Delaware, with its head office located in Dallas, Texas. At all material times, Trinity Industries or a subsidiary thereof was the lessor/supplier of the Tankers leased by Western Petroleum which transported Shale Liquids from New Town, North Dakota towards St. John, New Brunswick on July 6, 2013 on the Train. Trinity Industries was either responsible for or was aware of the decision to use the Tankers to ship the Shale Liquids on the Train and of the decision to transport the Tankers along inadequate and deficient railways operated by the Rail World Respondents, as described herein;

17.10.3 Respondent Trinity Rail Group, LLC, ("Trinity Rail"), is a corporation incorporated pursuant to the laws of Delaware, with its head office in Dallas, Texas and it is a subsidiary of Trinity Industries. At all material times, Trinity Rail was the lessor/supplier of the Tankers leased by Western Petroleum which transported Shale Liquids from New Town, North Dakota towards St. John, New Brunswick on July 6, 2013 on the Train. Trinity Rail was either responsible for or was aware of the decision to use the Tankers to ship the Shale Liquids on the Train and of the decision to transport the Tankers along inadequate and deficient railways operated by the Rail World Respondents, as described herein;

17.10.3.1 Respondent Trinity Rail Leasing 2012 LLC ("Trinity Rail Leasing"), is a corporation incorporated pursuant to the laws of Delaware, with its head office in Dallas, Texas and it is a subsidiary of Trinity Industries. At all material times, Trinity Rail Leasing was the lessor/supplier of the Tankers leased by Western Petroleum which transported Shale Liquids from New Town, North Dakota towards St. John, New Brunswick on July 6, 2013 on the Train. Trinity Rail Leasing was either responsible for or was aware of the decision to use the Tankers to ship the Shale Liquids on the Train and of the decision to transport the Tankers along inadequate and deficient railways operated by the Rail World Respondents, as described herein;

17.10.4 At all relevant times, the Respondents Trinity Rail, (…) Trinity Industries and Trinity Rail Leasing (hereinafter collectively "Trinity") acted on behalf of each other and exercised control over their collective subsidiaries and corporate divisions directly or through their subsidiaries with regard to the shipment of the Shale Liquids on the Train. As such, each Trinity Respondent is individually as well as solidarily liable to the Petitioners and to the members of the Class for their injuries, losses and damages;

17.10.5 Respondent General Electric Railcar Services Corporation, ("GE Rail Services"), is a corporation incorporated pursuant to the laws of Delaware, with its head office in Chicago, Illinois. At all material times, GE Rail Services was the lessor/supplier of the Tankers leased by Western Petroleum which transported Shale Liquids from New Town, North Dakota towards St. John, New Brunswick on July 6, 2013 on the Train. GE Rail Services was either responsible for or was aware of the decision to use the Tankers to ship the Shale Liquids on the Train and of the decision to transport the Tankers along inadequate and deficient railways operated by the Rail World Respondents, as described herein;

17.10.6 Unless the context indicates otherwise, the Union Tank, Trinity, and GE Rail Services Respondents will be referred to collectively as the "Lessor Respondents";

17.10.7 Respondent Canadian Pacific Railway ("CP Rail") is a Canadian Railway Company, federally incorporated with its head office in Calgary, Alberta. At all material times, CP Rail subcontracted the transport of the Shale Liquids on the Train to the Rail World Respondents;

17.11 All of the Respondents, whether directly or indirectly, are significantly involved in the train derailment that took place on July 6, 2013 in Lac-Mégantic, Quebec;

C) The Situation

18. Please note that the facts presented herein are as known currently. As new facts emerge throughout the various investigations of the governmental bodies, the Petitioners reserve their right to amend so as to update this section;

The Highly Combustible Shale Liquids

a) Background: The Source and Extraction of the Shale Liquids

18.0.1 The Shale Liquids originated in the Bakken formation which is a rock formation of approximately 520,000 square kilometres of the subsurface

underlying parts of North Dakota, Montana, Saskatchewan and Manitoba. Crude oil is typically extracted from the Bakken formation as well as from other adjacent hydrocarbon-bearing formations through horizontal wells in the natural fractures in the rock formation or through the use of hydraulic fracturing (hereinafter "Fracking");

18.0.2 Fracking is the artificial fracturing of the rock formation, accomplished through the high pressure injection of sand, water and chemicals (which can include, *inter alia,* hydrochloric acid and ethylene glycol), in an attempt to release trapped oil and allow it to flow into the well;

18.0.3 Bakken oil production yields not only highly sought-after crude oil, but also a significant amount of volatile vapours, gases and light liquids, including propane, butane, pentane and natural gasoline. When left in their combined state, these gases and liquids can become extremely explosive, even at relatively low ambient temperatures. Some of these gases may be burned off – or flared off– at the well-head, but others remain in the extracted well product. The degree to which these volatile vapours, gases and light liquids, including propane, butane, pentane and natural gasoline are permitted to remain in the extracted well product is controlled by the oil producers as described in more detail below, the whole as appears more fully from a copy of a PowerPoint presentation prepared by MRO dated March 23, 2010, produced herein as **Exhibit R-1E.2**;

18.0.4 Following extraction, the stream of raw well production will include the crude oil, the light end liquids and the gases that were not flared, along with the materials and by-products of the Fracking process. These products are then mechanically separated into three (3) streams: produced salt water, gases and petroleum liquids, which include condensates, certain natural gas liquids and light oil. Depending on the effectiveness and appropriate calibration of the separation equipment which is controlled by the oil producers, varying quantities of gases are dissolved and/or mixed into the liquids, which are then transported from the separation equipment to the well-pad storage tanks;

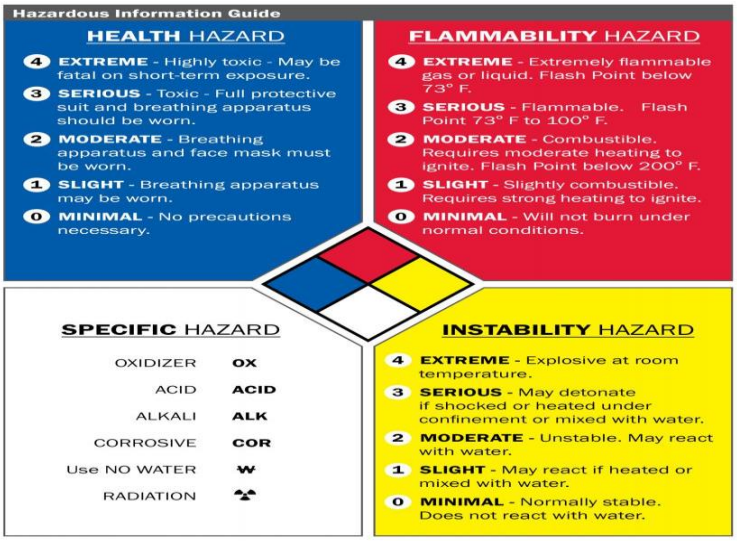
b) Dramatic Expansion in the Shipment of Crude Oil by Rail

18.0.5 In recent years and, in significant part as a result of the growth of oil production from the Bakken region, crude oil shipments have become the fastest growing of all hazardous materials shipped by rail in the United States (hereinafter, the "U.S."), with crude oil originations having increased 443% since 2005, the whole as appears more fully from a copy of the correspondence from the Federal Railroad Administration to the American Petroleum Institute dated July 29, 2013, produced herein as **Exhibit R-1E.3**;

18.0.6 Canada has experienced an even greater dramatic increase in the volume of crude oil carried by rail. Specifically, there has been a 28,000% increase in the amount of oil shipped via rail since 2009, increasing from 500 carloads in 2009, to an estimated 140,000 carloads in 2013, the whole as appears more fully from a copy of a CTV News article entitled "Quebec Disaster: Oil shipments by rail have increased 28,000 per cent since 2009" dated July 7, 2013, produced herein as **Exhibit R-1E.4**;

c) Hazard Classification: The Misclassification of the Shale Liquids

18.0.7 Oil producers are required to determine the appropriate hazard classification of their oil production at various stages in the process and for various purposes. For example, the well-pad storage tanks need to carry diamond shaped warning placards to reflect the appropriate hazard classification of their contents. These placards typically conform with the National Fire Protection Agency's Standard System for the Identification of the Hazards of Materials for Emergency Response ("NFPA 704"), which provides levels of risk in 4 categories as is depicted below: on the left in blue is the risk to human health, at the top right in red is the risk of flammability, on the right in yellow is the risk of reactivity and on the bottom in white is any additional risk, such radioactivity. All of these risks are allocated on a scale of 1 to 4, with 1 being the lowest level of risk and 4 being the highest;



18.0.8 In addition, as "offeror[s] of hazardous material for transportation in commerce", oil producers are responsible for knowing the composition of their product and properly classifying the hazardous material in compliance with the standards set out by in the HMR. In particular, the regulations provide that crude oil, as a flammable liquid is included in Class 3, while Class 4 materials include spontaneously combustible materials;

18.0.9 Class 3 flammable liquids being offered for transportation in commerce are further sub-categorized for risk into one of three packing groups ("PG") based on the substance's initial boiling point, absolute pressure and flash point with PG I representing the highest level of risk and PG III representing the lowest level of risk. These classification standards are consistent between the U.S. regulations (the HMR) and the applicable Canadian regulations, as set out in the *Transportation of Dangerous Goods Regulations, Part II*, SOR/2008-34;

18.0.10 Material Safety Data Sheets ("MSDS"s)[2] for Bakken Oil prepared by other Canadian oil companies, more specifically, Cenovus Energy Inc. ("Cenovus") in November, 2012 and Enbridge Pipelines Inc. ("Enbridge") in June, 2011, indicate an NFPA flammability risk level of 4; however, several well-pad storage tanks operated by MRO and Slawson in the Bakken region were placarded with a flammability risk of 3, the whole as appears more fully from a copy of the Cenovus Energy Inc. MSDS dated November 2, 2012, a copy of the Enbridge Pipelines Inc. MSDS dated 06/08/2011, produced herein as **Exhibits R-1E.5, and R-1E.6** respectively;

18.0.11 Further, the Cenovus MSDS classified the Bakken oil as PG I and the Enbridge MSDS classified the Bakken oil as PG II; however, according to the TSBC's investigation (discussed in greater detail below), all cargo on the Tankers was billed out as lower risk PG III product, the whole as appears more from a copy of the Rail Safety Advisory Letter to Transport Canada from the TSBC, dated September 11, 2013 produced herein as **Exhibit R-1E.7**;

18.0.12 There is a positive duty to properly label substances and disclose chemical identities on the basis of physic-chemical, health and/or environmental risk. In Canada, the program known as the Workplace Hazardous Materials Information System ("WHMIS") establishes the requirements for MSDS's and is federally-administered by Health Canada under Part II of the *Hazardous Products Act, R.S.C., 1985, c. H-3*, (the "*Hazardous Products Act*");

d) Concerns about Bakken oil prior to the Derailment and the "Bakken Blitz"

18.0.13 While Bakken oil was historically considered "sweet" oil, meaning that it is typically not infused with high levels of, toxic, highly flammable, corrosive and explosive hydrogen sulfide ("H_2S"), there have been increasing observations of elevated levels of H_2S in Bakken oil. The range of concerns and risks associated with H_2S and crude oil was well-known in the oil and gas industry prior to the Train Derailment, the whole as appears more fully from a copy of the PowerPoint presentation prepared by Irving Oil with

[2] Material safety data sheets ("MSDS"s) are a widely used system from cataloging information on chemicals, chemical compounds, and chemical mixtures.

respect to issues of quality control in crude oil transported by rail, produced herein as **Exhibit R-1E.8**;

18.0.14 In Canada, H_2S is a substance on the *Ingredient Disclosure List, SOR/88-64*, which is established by the Governor in Council pursuant to section 17(1) of the *Hazardous Products Act*. There are disclosure requirements in the *Hazardous Products Act* when H_2S is at a concentration/weight of 1%, the whole as appears more fully from a copy of an extract of the *Ingredient Disclosure List*, produced herein as **Exhibit R-1E.9**;

18.0.15 Among the sources of this H_2S contamination in the Bakken oil are the adjacent rock formations which are being targeted for Fracking to increase oil production. One of these targets is the Lodgepole formation which has significant oil reserves, but is also part of the Madison formation which is well known for the presence of H_2S, such that disruption of the Lodgepole formation to release the oil is very likely to also release the H_2S from the Madison formation;

18.0.16 The concern about H_2S in petroleum products sourcing out of North Dakota was of such concern prior to the Train Derailment that common carrier pipelines servicing the Bakken region set strict limits on the H_2S concentration permitted in the product. These levels were set at between 5 and 10 ppm, the whole as appears more fully from a copy of the Order Accepting Tariff Filing by the U.S. Federal Energy Regulatory Commission ("FERC") dated June 6, 2013, produced herein as **Exhibit R-1E.10**;

18.0.17 In order to meet this standard, the crude oil being extracted with higher H_2S concentrations would need to either be blended in order to dilute the H_2S level or be transported by alternate means, i.e. by rail;

18.0.18 In addition to the known risk of high H_2S concentrations in the oil extracted from the general area, other serious concerns were also mounting about the content of the crude oil coming from the North Dakota Bakken and its appropriate hazard classification;

18.0.19 Indeed, in the months preceding the Train Derailment, local U.S. regulatory authorities had safety concerns about transporting crude oil from the Bakken region by rail. As a result of these concerns, "Operation Classification" or the "Bakken Blitz" was launched, a strategy which was to involve attending unannounced at fuel-loading sites, where the oil is transferred onto rail cars, to inspect and to test the oil to see whether it was more volatile than represented, to see whether the Shale Liquids were being appropriately classified and placarded and to ensure that sufficient precautions were being taken by producers, transporters, shippers and railways to ensure safe transport of petroleum liquids;

18.0.20 The planning for these inspections began in March of 2013, based on previous audits conducted by the U.S. Federal Railroad Administration ("FRA") and field observations by the U.S. Pipeline and Hazardous Materials Safety Administration ("PHMSA), which had uncovered inconsistencies with crude oil classification. Unfortunately, this operation did not begin until after the Train Derailment, the whole as appears more fully from a copy of the Globe and Mail article entitled "U.S. officials were probing safety of Bakken oil months before Lac-Mégantic" dated August 29, 2013, produced herein as **Exhibit R-1E.11;**

e) The Role of the Oil Producer Respondents

18.0.21 World Fuel listed MRO and Slawson as the exclusive producers in its oil purchases from oil wells around the Fort Berthold Reservation in North Dakota in or around June of 2013, i.e. immediately prior to the Train Derailment;

18.0.22 As the operators of the wells and as "offerors of hazardous materials for transportation in commerce", Respondents MRO and Slawson were responsible for testing and determining the composition and content of the petroleum liquids that they were ultimately offering for sale and transportation;

18.0.23 This inquiry should have resulted in posting accurate signage on the post-production storage tanks containing the Shale Liquids and should have provided accurate information so that the appropriate PG classification would be allocated to the Shale Liquids by subsequent parties involved in the transportation of the Shale Liquids;

18.0.24 Notwithstanding that Bakken oil had regularly been found to contain high levels of volatile gases and light liquids, that elevated concentrations of H_2S had been detected in wells adjacent to those from which the Shale Liquids were drawn, and the flammability and transportation risk classifications for Bakken oil in the MSDSs prepared by other oil companies (i.e. NFPA flammability risk of 4 and PG I or II), observations of well-pad storage tanks operated by MRO and Slawson even after the Train Derailment indicated a hazard classification of only 3 for flammability and the Shale Liquids were billed out as being PG III product;

18.1 Prior to July 5, 2013, Irving Oil contracted with World Fuel for the purchase and transport of Shale Liquids, known by all of the Respondents to be obtained from the Bakken formation in North Dakota. As noted above, these Shale Liquids were known to the Respondents to be a highly flammable and therefore hazardous substance (…); however, from the point of extraction to

the point of explosion in Lac-Mégantic, these risks were inadequately signaled and inadequate precautions were taken to ensure safe transport;

18.1.0.1 The Shale Liquids were mixed with other volatile substances and/or contained other chemical components that were highly flammable and not typically found in crude oil, the whole as appears more fully from a copy the Globe and Mail article entitled "Blast Probe Turns to Oil Composition" dated July 19, 2013, produced herein as **Exhibit R-1F**;

18.1.1 All Respondents knew or ought to have known that the Shale Liquids were much more volatile, explosive and combustible than typical crude oil, that they were a highly flammable mixture of multiple petroleum substances, including hydrogen sulfide gas. The Respondents knew or ought to have known that extra precautions had to be taken in order to ensure the safe transport of the Shale Liquids by the Train;

18.2 In order to deliver the Shale Liquids to their purchaser, World Fuel contracted with CP Rail to transfer the Shale Liquids from New Town, North Dakota to Montreal, Quebec. CP Rail further subcontracted to MMAR to transport the Shale Liquids from Montreal, Quebec to a rail company in New Brunswick owned by Irving Oil, which would then transport the Shale Liquids to Irving Oil's refinery in St. John, New Brunswick. Western Petroleum leased the Tankers from the Lessor Respondents for this purpose;

18.3 On or about July 5, 2013, the CP Rail train reached Côte Saint-Luc, Quebec, where the carriage of the 72 Tankers was transferred to Respondent MMAR;

18.4 The MMAR track upon which the Train was travelling was an "excepted track". Trains travelling on this track could only travel approximately 10 km/hour and could not carry hazardous materials;

The Train Derailment

19. On July 5, 2013, at approximately 11:25 PM, Respondent Harding, the one (1) engineer employed by Respondent MMAR to operate the Train, parked and tied down the Train in the town of Nantes, Québec, for a stopover en route to the province of New Brunswick, the whole as appears more fully from a copy of the Montreal, Maine and Atlantic Railway (MMAR) Press Release entitled "Derailment in Lac-Mégantic, Quebec" dated July 6, 2013, produced herein as **Exhibit R-2**;

20. The Train was comprised of the 72 DOT-111 tank cars, each carrying 113,000 litres ("the Tankers") of the Shale Liquids, and of 5 locomotive units (hereinafter collectively referred to as the "Train"), the whole as appears

more fully from a copy of the National Post graphic article entitled “The Night a Train Destroyed a Town”, produced herein as **Exhibit R-3**;

21. The estimated 9,975 ton Train was parked approximately 11 kilometers west of Lac-Mégantic, Québec, on the main rail line at an elevation point of 515 meters on an incline of approximately 1.2%;

22. Respondent Harding claims to have tied down the Train and turned off four of the five engines, leaving on the lead engine #5017 to ensure that the air brake system continued to operate, the whole as appears more fully from a copy of the Wall Street Journal article entitled “Brakes Cited in Quebec Wreck” dated July 10, 2013, produced herein as **Exhibit R-4**;

23. Respondent Harding failed to apply any or insufficient hand brakes, thereby failing to act in accordance with existing requirements, regulations, and policy;

24. Respondent Harding, the only employee assigned to operate the Train, then left at approximately 11:25 PM and went to a local hotel for the night, leaving the train unattended. The Train was emitting smoke at that time;

25. At approximately 11:30 PM, residents of Nantes noticed a significant amount of smoke coming from the Train’s first locomotive, and called 9-1-1;

26. At approximately 11:45 PM, the Nantes fire department arrived on the scene to extinguish a small fire in the locomotive, reportedly caused by a ruptured oil or fuel line in the locomotive. In accordance with procedure, the fire department turned off the running engine so as to prevent the fire from accessing the engine’s fuel;

27. At approximately 11:50 PM, the fire was reported to rail traffic control and Respondent MMAR dispatched two (2) track maintenance employees (“MMAR Representatives”) to the scene. Neither Respondent Harding nor another properly qualified engineer attended ;

28. By 12:15 AM on July 6, 2013, the blaze was completely extinguished and the firefighters left the Train in the custody of the MMAR Representatives, who either failed to take any, or failed to take adequate measures in the emergency situation to ensure that the Train was safely secured. In addition, they failed to request or to bring the situation to the attention of Harding or any other qualified engineer to ensure the safety and security of the Train, particularly its braking system. Instead, they simply left without taking appropriate and necessary measures to secure the Train;

29. At approximately 12:56 AM, after the emergency responders had left and, while no MMAR Representatives were present, the Train began to move downhill along the track towards the town of Lac-Mégantic;

30. At approximately 1:14 AM, the Train derailed at the Rue Frontenac road crossing in Lac-Mégantic and crashed into the downtown core and business centre of the town, incinerating and killing almost fifty (50) people (hereinafter referred to as the "Train Derailment");

31. Between 1:15 AM and 4:00 AM, several tanker cars caught fire and the highly flammable tank cars filled with Shale Liquids exploded, decimating the entire area. The explosions continued for several hours as 2,000 residents were evacuated from the area to prevent further deaths (hereinafter referred to as the "Explosion"), the whole as appears more fully from a copy of the National Post article entitled "Death Toll Rises to 13 with Dozens More Still Missing" dated July 9, 2013, produced herein as **Exhibit R-5**;

32. In the aftermath of the Train Derailment and Explosion, 47 deaths have been confirmed and 3 people suspected to have died in the explosion remain missing. Numerous people also sustained extensive physical injuries as a result of the blasts;

33. At least thirty (30) buildings owned and/or leased by Class Members were destroyed in the downtown "red zone" and at least 20 people lost their homes;

34. The (…) TSBC and the Sûreté du Québec ("SQ") have both launched investigations into the causes of the Train Derailment, the whole as appears more fully from a copy of the Transportation Safety Board of Canada's Rail Investigation Report entitled "Railway investigation R13D0054" dated July 12, 2013 and from a copy of the Globe and Mail article entitled "Police signal there are sufficient grounds for charges in Lac-Mégantic" dated July 9, 2013, produced herein, *en liasse*, as **Exhibit R-6**;

35. On July 10, 2013, Rail World Respondents, through their chairman and president admitted responsibility for the Train Derailment, destruction and deaths caused by the Train Derailment, explosion and fire. Respondent Edward Burkhardt gave an impromptu press conference to the media in Lac-Mégantic, in which he was asked by a reporter: "You don't accept full responsibility for this?", his answer was the following:

> "I didn't say that, you see people are always putting words in my mouth, please, I did not say that, we think we have plenty of responsibility here, whether we have total responsibility is yet to be determined. We have plenty of it. We're going to try to help out with everything that we can in this community, working

> through the city and the Red Cross to do our best to meet our obligation to make repairs and put people back in homes and things like that."

And when asked about the application of the brakes on the Train, Respondent Burkhardt replied:

> "This was a failure of the brakes; it's very questionable whether the brakes- the hand brakes- were properly applied on this train. As a matter of fact, I'd say they weren't or we wouldn't have had this incident [...] I don't think the employee removed brakes that were set; I think they failed to set the brakes in the first place. We know the brakes were applied properly on a lot of the locomotive. The fact that when the air-brakes released on the locomotive, that the train "ran away", would indicate that the hand brakes on the balance of the train were not properly applied. It was our employee that was responsible for setting an adequate number of hand brakes on the train."

<u>The Respondent MMAR's Poor Safety Record</u>

35.1 At all material times, the Rail World Respondents had a duty to ensure that MMAR operated safely, that each train operated by MMAR including the Train was adequately staffed to ensure the safety of all goods transported, and that MMAR's accident and incident rate was not higher than national averages, and it failed in all of these duties;

36. Since 2003, Respondent MMAR has reported 129 accidents, including 14 main track derailments and 4 collisions, according to Canada's Transportation Safety Board (Exhibit R-6), making it one of the most unsafe railway operators in North America;

37. In the United States, Respondent MMAR has reported 23 accidents, injuries and other mishaps from 2010 to 2012, according to Federal Railroad Administration data, the whole as appears more fully from a copy of the Wall Street Journal article entitled "Runaway Quebec Train's Owner Battled Safety Issues" dated July 9, 2013, produced herein as **Exhibit R-7**;

38. In 2012, Respondent MMAR had an average of 36.1 occurrences per million miles, while the national average was 14.6. Between 2003 and 2011, the company's rate ranged between 23.4 and 56 incidents per million miles, while the national average ranged between 15.9 and 19.3, according to Federal Railroad Administration data (Exhibit R-7);

39. Several of these incidents involved brakes that failed or were not properly activated, resulting in the train rolling away unmanned;

40. For example, in February 2010, a train of 3 MMAR locomotives were left unattended in Brownville Junction, Maine. The air brakes failed and the train rolled down a hill and crashed, causing physical injury and spilling more than 1,100 litres of fuel, the whole as appears more fully from a copy of the Bureau of Remediation & Waste Management report number B-97-2013, produced herein as **Exhibit R-8**;

41. On June 11, 2013, a MMAR train derailed in Frontenac, Quebec, just east of Lac Mégantic and spilled 13,000 litres of diesel fuel, the whole as appears more fully from a copy of the La Presse article entitled “Déversement de 13 000 litres de diesel à Frontenac, près de Lac-Mégantic” dated June 11, 2013, produced herein as **Exhibit R-9**;

The Rail World Respondents’ Cutbacks

42. In 2003, Respondent Rail World bought the Bangor & Aroostook Railroad, which spans approximately 1200 kilometers of regional rail track in Maine, Vermont and Canada, and renamed it Montreal, Maine and Atlantic Railway Inc.;

43. From the beginning, Respondent MMAR suffered many financial difficulties, largely due to decreases in the lumber and pulp-and-paper industries that once sustained it, the whole as appears more fully from a copy of The Gazette article entitled “Railway companies cutting back crew” dated July 10, 2013, produced herein as **Exhibit R-10**;

44. Following the takeover, employee wages were drastically cut in order to save costs. Cuts and layoffs continued in 2006 and again in 2008, the whole as appears more fully from a copy of The Ottawa Star article entitled “Lac Megantic: Railway's history of cost-cutting” dated July 11, 2013, produced herein as **Exhibit R-11**;

45. Respondent MMAR, contrary to industry standards, reduced its locomotive crews by half, replacing two (2) workers with a single employee in charge of an entire train. In North America, most train operators, including two of Canada’s largest -Canadian National Railway Ltd. and Canadian Pacific Railway Ltd- use two staff to operate one train (Exhibit R-7). In particular, it had a special duty to ensure the usage of adequate train crews of at least two (2) engineers when transporting highly flammable Shale Liquids through urban and residential areas;

46. In 2010, Respondent MMAR sold 375 kilometers of rail line in Maine to the state itself for close to $20.1 million, citing economic hardship (Exhibit R-7);

47. In 2012, Respondent MMAR's finances had somewhat improved after years of operating losses, in part due to the new business of shipping petroleum products to Irving Oil in Saint John, New Brunswick, where the Train was headed before the Train Derailment;

48. In order the keep costs at a minimum and the company profitable, Respondent MMAR began outfitting its trains with remote-control communications technology systems and employing other cost-cutting tactics, such as employee cutbacks, with complete disregard for industry safety and security practices when transporting inherently dangerous goods;

49. These cutbacks demonstrate a serious and concerted preoccupation with finances at the expense of the necessary safety and security policies that should have been the primary concern of the Respondents;

50. The policies pertaining to the transportation of goods by rail and the implementation of such policies by Respondent MMAR emanate from Respondent Rail World, of which Respondent Burkhardt is President and Chief Executive Officer;

51. All directives concerning the number of employees required to operate the Train, the number and manner in which the hand brakes are to be applied, the decisions to leave the Train unattended, the lack of safety and security measures or procedures are dictated and enforced by Respondent Rail World and its alter ego, Respondent Burkhardt in his capacity as President and Chairman of the Board, at his sole unfettered discretion;

52. Canada's rail industry is largely self-regulating, allowing rail corporations such as Respondent Rail World to implement and enforce their own guidelines and standards. Because of the lack of regulation in this industry, it is impossible to know whether these corporations actually implemented these protocols and, if so, whether they actually adhered to their safety protocols;

53. Respondent Burkhardt, through Respondent Company Rail World maintains authority, control, decision making and governing power over all the subsidiary and affiliated corporations including Respondents Rail World Holdings, MMAR, Earlston, Pea Vine, MMAC, MMAR Canada. Rail World is, effectively, the alter-ego of these companies through which it is able to exercise various business transactions;

53.0.1 Overall, the Rail World Respondents, through their policies and practices, operated MMAR without adequate staffing and safety precautions, thereby resulting in an increased likelihood of accidents and incidents involving trains that placed members of the public at an elevated risk of harm;

The DOT-111 Tankers are Prone to Rupture and Explosion

53.1 DOT-111 tank cars, also known as CTC-111A tank cars, were leased Western Petroleum from the Lessor Respondents. The Tankers were used to transport the Shale Liquids from North Dakota to New Brunswick. The Tankers are multi-purpose, non-pressure tank cars that are widely known or ought to have been known by all Respondents, and are known by regulators to be highly vulnerable to leaks, ruptures and explosions;

53.2 Respondents knew or ought to have known that the United States National Transportation Safety Board ("U.S. NTSB") repeatedly noted in numerous investigations, beginning as early as May 1991, that DOT-111 model tank cars have multiple design flaws which result in a high incidence of tank failures during collisions, and render them unsuitable for the transport of dangerous and explosive products, the whole as appears more fully from a copy of the U.S. NTSB Safety Recommendation dated March 2, 2012, produced herein as **Exhibit R-12**;

53.3 All Respondents knew or ought to have known that the TSBC also noted that the DOT-111 tank's design is flawed, resulting in a high incidence of tank failure during accidents and should not have been used to transport highly combustible and explosive Shale Liquids such as those liquids and gases contained in The Tankers. Accidents in Canada, alone, where DOT-111 design flaws were ultimately identified as a contributing causal factor to the damage that were caused are numerous and include:

a. the January 30, 1994 derailment of 23 freight cars northwest of Sudbury, Ontario, in which three DOT-111 tanks cars containing dangerous goods failed and released product; the whole as appears more fully from a copy of TSBC Railway Occurrence Report dated January 30, 1994, produced herein as **Exhibit R-13**;

b. the October 17, 1994 derailment of six tank cars containing methanol in Lethbridge, Alberta. Four derailed DOT-111 tank cars failed and released approximately 230,700 litres of methanol. A 20-square-block area of the city was evacuated; the whole as appears more fully from a copy of TSBC Railway Occurrence Report dated October 17, 1994, produced herein as **Exhibit R-14**;

c. the January 21, 1995 derailment of 28 freight cars of sulfuric acid near Gouin, Quebec. Eleven DOT-111 tanks failed and released 230,000 litres of sulphuric acid, causing considerable environmental damage; the whole as appears more fully from a copy of TSBC Railway Occurrence Report dated January 21, 1995, produced herein as **Exhibit R-15**;

d. the August 27, 1999 derailment of a DOT-111 tank that failed and released 5,000 gallons of combustible product in Cornwall, Ontario, resulting in a temporary evacuation of customers and staff from nearby businesses; the whole as appears more fully from a copy of TSBC Railway Investigation Report dated August 27, 1999, produced herein as **Exhibit R-16**; and

e. the May 2, 2005 collision of 74 freight cars, in which a DOT-11 tank failed and released 98,000 litres of denatured alcohol, resulting in the evacuation of 200 people; the whole as appears more fully from a copy of TSBC Railway Investigation Report dated May 2, 2005, produced herein as **Exhibit R-17**;

53.4 Flaws in the design of the DOT-111 tank cars that were known or ought to have been known by the Respondents include:

a) the tank is not double-hulled and its steel head and shell are too thin to resist puncture;

b) the steel shell is not made of normalized steel, which is more resistant to rupture;

c) the tank's ends are especially vulnerable to tears from couplers that can fly up after ripping off between cars;

d) unloading valves and other exposed fittings on the tops of the tanks easily break during rollovers as they do not have protective guards, and when this happens the tanks have the capacity to rapidly unload; (…)

e) the tanks are not equipped with shields to resist shock in the event of a collision (…);

f) where such tanks have previously been used to carry crude oil and solids have settled in the car, there can be corrosion in the bottom of the car, leading to an increased risk of breach in the event of a collision; and

g) where the crude being transported contains a mixture of, *inter alia*, methane, ethane, propane, H_2S which results in high vapour pressure, it can cause bubbling crude, leading to corrosion of the tank and increased risk of breach in the event of a collision, the whole as appears more fully from a copy of slide 14 of the power-point presentation prepared for a Canadian Crude Quality Technical Association workshop on Vapour Pressure held in Edmonton on February 5 and 6, 2013, produced herein as **Exhibit R-18**;

As a result, it was widely known that the Tankers were highly prone to failure and leakage even in collisions at low speed and should not have been used to transport the Shale Liquids;

53.5 These flaws were repeatedly identified and publicized as being of great concern to Canadian and American regulators. In 2011, the American Association of Railroads' Tank Car Committee imposed design changes intended to improve safety in new DOT-111s, including requirements for thicker heads, low-pressure release valves and puncture-proof shells. These design modifications have also been adopted for new DOT-111 cars manufactured and used in Canada, but there is no requirement to modify existing tanks. While these changes decrease the likelihood of tank rupture in tanks produced in late 2011 and onwards, the benefits are not realized unless a train is composed entirely of tanks that possess these modifications. None of the tankers in question had received the design reinforcement changes described above;

53.6 In the presence of ongoing concerns, the U.S. NTSB issued safety guidelines in March, 2012 for all DOT-111s, which included a recommendation that all tank cars used to carry ethanol and crude oil be reinforced to render them more resistant to punctures and explosions and that existing non-reinforced tankers be phased out completely. These guidelines highlighted the dangers posed by the transport of large quantities of ethanol and crude oil by rail and specifically cited the increased volume of crude oil being shipped out of the Bakken region of North Dakota as one of many justifications for the requirement for improved standards (Exhibit R-12). Respondents knew or ought to have known of these safety guidelines and should have ensured that Shale Liquids were not transported in The Tankers or alternatively that Shale Liquids were only transported in tankers that had been reinforced in a manner consistent with the guidelines;

53.7 Despite known concerns surrounding the use of non-reinforced tankers to transport Shale Liquids all of The Tankers involved in the Train Derailment were older and non-reinforced DOT-111 tanks, thus remaining highly prone to rupture and explosion in the event of a derailment;

53.7.1 Prior to the Train Derailment, there had been increasing numbers of incidents involving damage to tank cars in crude oil service in the form of severe corrosion of the internal surface of the tank, man-way covers, and valves and fittings, possibly resulting from contamination of the crude oil by materials used in the Fracking process that are corrosive to the tank car tank and service equipment (Exhibit R-1E.3);

53.8 Respondents knew or ought to have known that DOT-111 tanks were prone to rupture and should therefore not have been used to transport the Shale

Liquids. The Respondents had a duty to ensure that the Shale Liquids were not transported in the Tankers and were safely transported in tanks that had proper safety features and reinforcement to limit failure in the event of a derailement, such as double-hulls, thicker shells and heads, front and rear shields to absorb the impact of collisions, guards for fittings, and gauges to restrict the rapid unloading of tank contents;

Regulatory Action following the Train Derailment

a) The U.S. Federal Railroad Authority

53.9 In the aftermath of the Train Derailment, the FRA circulated a letter (Exhibit R-1E.3) to the American Petroleum Institute indicating its concerns including "…the proper classification of crude oil being shipped by rail, the subsequent determination or selection of the proper tank car packaging used for transporting crude oil, and the corresponding tank car outage requirements";

53.10 This letter also noted that because crude oil transported by rail is often derived from different sources and then blended, it was critical that shippers determine the proper classification of the crude oil in accordance with the HMR;

53.11 The FRA also noted that audits of crude oil loading facilities had indicated that the classification of crude oil was being based solely on the basis of MSDS data provided by the consignee to the shipper without the shipper being aware of validation of the values of the crude oil properties. These audits further indicated that such MSDS data was not gleaned from any recently conducted tests and that misclassification was occurring. These practices constituted a misuse of the crude oil HMR packaging exceptions and reflected subsequent violations of the HMR;

53.12 The FRA also concluded that when crude oil is loaded into tank cars, it is critical that that the existence and concentration of specific elements or compounds be identified, along with the corrosivity of the materials to the tank car tanks and service equipment. Proper identification of these elements enables a shipper to ensure the reliability of the tank car. Proper identification also enables a shipper to determine if there is a need for an interior coating or lining, alternative materials of construction for valves and fittings, and performance requirements for fluid sealing elements, such as gaskets and o-rings;

53.13 As a result of these various concerns, the FRA advised that it was investigating whether crude is being properly classified in the U.S. and whether proper tank car packagings are being used for transportation;

53.14 A Safety Advisory issued jointly by the FRA and the PHMSA on August 2, 2013, reiterated these concerns about the proper classification of crude oil. In particular, the Advisory discussed the safety implications of ensuring that the

Packing Group classification was correct, as this can affect the transportation requirements under the HMR, the whole as appears more fully from a copy of the Safety Advisory dated August 2, 2013, produced herein as **Exhibit R-19**;

b) Update on the Transportation Safety Board Investigation

53.15 The TSBC is continuing its investigation of the Train Derailment and final conclusions have not yet been reached with respect to the cause or causes of the tragedy; however, in a news release issued on September 11, 2013, the TSBC advised that safety advisory letters had been issued to Transport Canada and to PHMSA, calling on these authorities to ensure that the properties of the dangerous goods being imported or transported are accurately determined and documented for safe transportation;

53.16 The news release and referenced letters also advised that a preliminary review of TSBC test results reflected that the level of hazard posed by the petroleum crude oil transported in the Tankers was not accurately documented. In particular, the Shale Liquids were reported as being offered for transport, packaged and transported in a manner which represented a lower hazard, as a less volatile flammable liquid and, as previously noted, all cargo was billed out as PG III product;;

53.17 The TSBC also noted that the lower flash point of the Shale Liquids explained, in part, why they ignited so quickly once the DOT-111 tanks cars were breached and also called into question the adequacy of the DOT-111 cars for use in the transport of large quantities of low flash flammable liquids;

53.18 Further testing continues to be performed on the product samples as well as on components of the Tankers as can be seen from the Rail Safety Advisory Letter to Transport Canada from the TSBC (Exhibit R-1E.7) and the whole as appears more fully from a copy of the subject news release and a copy of the letter to PHMSA, both dated September 11, 2013 and produced herein as **Exhibits R-20** and **R-21**, respectively;

D) The Faults

54. The Respondents had a duty to the Petitioners and the Class Members to abide by the rules of conduct, usage or law to ensure the safe transportation of the Shale Liquids and the safe operation of the Train;

54.1 The Respondents had a duty to the Petitioners and the Class Members to exercise reasonable care in their determination of the methods, railway, railway operator and tanks used to ship the Shale Liquids from North Dakota to New Brunswick, and to exercise reasonable care in their physical shipment of the Shale Liquids from North Dakota to New Brunswick;

55. The Train Derailment and the resulting injuries and damages were caused by the faults of the Respondents themselves, as well as, of their agents or servants, for whose actions, omissions and negligence they are responsible, the particulars of which include, but are not limited to:

A. With regards to the Oil Respondents and the Oil Producer Respondents:

a.a) they failed to ensure that the raw well product was adequately processed and separated to remove any significant content of volatile vapours, gases and/or highly flammable light ends from the Shale Liquids before they were transported from North Dakota to Lac-Mégantic;

a.b) alternatively, they knowingly added, or allowed to be added or knew to be added to the Shale Liquids, quantities of highly flammable and volatile light end petroleum liquids and/or vapours and/or gases and/or blended the crude oil with condensate;

a.c) they failed to conduct any or any adequate well-site testing to determine the composition of the Shale Liquids prior to transport, such that the hazard classification indicated for the Shale Liquids was not and could not have been an accurate reflection of the content of the cargo being shipped;

a.d) in failing to properly determine the composition of the contents of the Shale Liquids and in failing to properly classify the hazard rating of the Shale Liquids, they could not properly determine the shipping requirements of the Shale Liquids, including whether the Shale Liquids required transport via reinforced and pressurized tank cars rather than DOT-111 tank cars;

a) they failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were properly and safely transported;

a.1) they failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were properly labeled and transported as hazardous materials;

b) they failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were not transported in DOT-111 tanks, and/or that they were only transported in DOT-111 tanks that were properly reinforced to improve their safety in the event of a collision;

c) they failed and/or neglected to inspect or adequately inspect the Train and its equipment before allowing it to be used to transport the Shale Liquids;

d) they failed and/or neglected to hire a safe and qualified railway operator with a positive safety record to transport the Shale Liquids;

d.1) they failed and/or neglected to hire a safe and qualified railway operator that would have adequately staffed its trains to ensure safety and would not have left trains transporting dangerous and explosive materials unattended;

d.2) they failed and/or neglected to hire a safe and qualified railway operator that would only operate locomotives in good working order, instead they directly or indirectly contracted with MMAR which had a poor safety record and which railway tracks were considered to be excepted;

d.3) they failed and/or neglected to hire a safe and qualified railway operator that would have been adequately capitalized and insured in the event that such an incident occurred and substantial damages were required to be paid to Petitioners and members of the Class, including those killed and injured as a result of the Train Derailment;

e) they failed and/or neglected to identify the risk of the Train Derailment in the present circumstances when they ought reasonably to have done so, and they failed and/or neglected to prevent such an incident from occurring;

f) they failed and/or neglected to promulgate, implement and enforce adequate rules and regulations pertaining to the safe shipment of the Shale Liquids by train in accordance with all industry and regulatory standards;

g) they hired insufficient and incompetent employees and servants, and are liable for the acts, omissions or negligence of same;

h) they failed or neglected to properly instruct and educate their employees on how to safely transfer Shale Liquids by train and had inadequate operating standards and protocols;

i) they allowed a dangerous situation to exist, when, by the use of a reasonable effort, they could have prevented the Train Derailment and/or limited the scope of damage resulting therefrom;

B. With regards to the Rail World Respondents:

a. they failed and/or neglected to take reasonable or any care to ensure that the Train was safely and securely stationed for the night on July 5, 2013;

b. they failed and/or neglected to inspect or adequately inspect the Train and its equipment before leaving it unattended on July 5, 2013;

c. they failed and/or neglected to activate or secure a reasonable amount of the Train's hand brakes both before and after the fire at 11:30 PM on July 5, 2013;

d. they failed and/or neglected to have or maintain the Train in proper state of mechanical order suitable for the safe use thereof;

e. they failed and/or neglected to take the appropriate safety and security measures following the fire;

e.1) they failed and/or neglected to ensure that a qualified train engineer or any other qualified employee inspected the train following the fire;

e.2) they failed and/or neglected to contact Respondent Harding following the fire to inform him that the fire had occurred, that the Train's engine had been turned off, and that the Train's air brakes were no longer operational;

e.3) they failed and/or neglected to ensure that the Train remained attended at all times during and following the fire on the evening of July 5, 2013

e.4) they failed and/or neglected to implement appropriate and adequate safety protocols to follow in emergency situations;

e.5) they failed and/or neglected to adequately train their employees in safety protocols in emergency situations;

f. they failed and/or neglected to consider the dangers of leaving the Train on a slope and on the main rail line, unattended, for an extended period of time;

g. they failed and/or neglected to identify the risk of the Train Derailment in the present circumstances when they ought reasonably to have done so and they failed and/or neglected to prevent such an incident from occurring;

h. they failed and/or neglected to promulgate, implement and enforce rules and regulations pertaining to the safe operation of the Train;

i. they hired incompetent employees and servants, and are liable for the acts, omissions or negligence of same;

j. they permitted incompetent employees, whose faculties of observation, perception and judgment were inadequate, to operate the Train;

k. they caused and/or allowed the train to be operated by a single conductor despite the fact that they knew or should have known that having at least two (2) conductors on board was the common safe practice;

l. they permitted a person to operate the Train who failed to identify a dangerous situation and take appropriate measures to avoid it;

m. they failed or neglected to properly instruct and educate their employees on how to safely operate the Train and the appropriate measures to take after a fire;

n. they allowed a dangerous situation to exist, when, by the use of a reasonable effort, they could have prevented the Train Derailment and/or limited the scope of resulting damage;

o. they agreed to transport hazardous and explosive materials in a wholly unsafe and inadequate manner and thus failed to ensure the safety of the public;

p. they allowed MMAR, MMAC, and/or MMA Canada to operate without adequate capitalization, including maintaining both adequate capital and adequate liability insurance coverage, in the event that such an incident occurred and damages needed to be paid;

C. With regards to the Lessor Respondents:

a) they failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were properly and safely transported;

b) they failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were not transported in DOT-111 tanks, and/or that they were only transported in DOT-111 tanks that were properly reinforced;

c) they knew or ought to have known and/or failed to make any inquiries regarding the hazardous and flammable nature of the Shale Liquids when they ought to have done so, thereby allowing a hazardous and flammable liquid to be transported in an unsafe manner;

d) they failed and/or neglected to inspect or to adequately inspect the Train and its equipment before allowing it to be used to transport the Shale Liquids;

e) they failed and/or neglected to promulgate, to implement and to enforce rules and regulations pertaining to the safe shipment of the Shale Liquids by train;

f) they hired incompetent employees and servants, and are liable for the acts, omissions and/or negligence of same;

g) they failed to or neglected to properly instruct and educate their employees on the transfer Shale Liquids by train; and

h) they allowed a dangerous situation to exist, when, by the use of a reasonable effort, they could have prevented the Train Derailment and/or limited the scope of damage resulting therefrom;

D. With regards to the CP Rail Respondent:

a) although it was familiar with the track, as its previous owner, and knew it was an excepted track, it still subcontracted with MMAR, despite its poor safety record and inadequate insurance coverage;

b) it failed and/or neglected to hire a safe and qualified railway operator that would have been adequately solvent, capitalized and insured in the event that such an incident occurred and substantial damages were required to be paid to Petitioners and members of the Class, including those killed and injured as a result of the Train Derailment;

c) it failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were properly and safely transported;

d) it failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were properly labeled and transported as hazardous materials;

e) it failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were not transported in DOT-111 tanks, and/or that they were only transported in DOT-111 tanks that were properly reinforced to improve their safety in the event of a collision;

f) it failed and/or neglected to hire a safe and qualified railway operator with a positive safety record to transport the Shale Liquids;

g) it failed and/or neglected to hire a safe and qualified railway operator that would have adequately staffed its trains to ensure safety and would not have left trains transporting dangerous and explosive materials unattended;

h) it failed and/or neglected to hire a safe and qualified railway operator that would only operate locomotives in good working order, instead it

contracted with MMAR which had a poor safety record and which railway tracks were considered to be excepted;

i) it had a duty to use a safe and qualified railway operator that abided by accepted industry and regulatory standards and that maintained adequate industry ranking in terms of safety;

j) it failed and/or neglected to inspect or adequately inspect the Train and its equipment or the track before contracting with MMAR to transport the Shale Liquids on the MMAR track;

k) it failed and/or neglected to identify the risk of the Train Derailment in the present circumstances when it ought reasonably to have done so, and they failed and/or neglected to prevent such an incident from occurring;

l) it allowed a dangerous situation to exist, when, by the use of a reasonable effort, it could have prevented the Train Derailment and/or limited the scope of damage resulting therefrom;

55.1 The Train Derailment and the resulting injuries and damages were caused by the Respondents. The Respondents knew or should have known about the volatility of the Shale Liquids, the defects and unsuitability of the DOT-111 tankers used to transport the Shale Liquids, the poor safety record of the Rail World Respondents, and the fact that transport of a dangerous substance was occurring in a residential area;

55.2 The Respondents had a duty to take care to minimize all safety risks associated with the transportation of the Shale Liquids by ensuring that the Shale Liquids were transported in properly reinforced tanks with adequate safety features to reduce the impact of collision and likelihood of failure; by ensuring that the railway used to ship the Shale Liquids had a strong safety record and low record of collisions; and by ensuring that all staff involved in the transport of the Shale Liquids were adequately trained and that the Train would be adequately staffed during the trip to New Brunswick; and failed to do so;

55.3 This negligence and/or recklessness and the resulting risk of harm was directed towards the general public, which in turn materialized as against the Petitioners and the Class Members. The Respondents knowingly endangered the safety of the Petitioners and the Class Members by shipping the Shale Liquids, a highly flammable and inherently dangerous product, through residential areas in a manner that was known to be dangerous and to result in an increased likelihood of collision, explosion and fire;

II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONERS

Petitioner Ouellet

56. Petitioner Ouellet resides at 4282 Rue Mauger in Lac-Mégantic, Quebec;

57. Petitioner Ouellet suffered many grave losses due to the Train Derailment including, but not limited to the death of his partner, Diane Bizier. They had been in a serious relationship for five (5) years;

58. Petitioner Ouellet's place of work, a factory, was closed for 3 days following the Train Derailment, which resulted in the loss of many hours of work and income;

59. Furthermore, Petitioner Ouellet took a work leave for one week due to overwhelming stress, anxiety and sadness;

60. As a result of the death of his partner, Petitioner Ouellet also suffered a loss of support, companionship and consortium;

61. Petitioner's damages are a direct and proximate result of the Respondents' conduct;

62. In consequence of the foregoing, Petitioner is justified in claiming damages;

Petitioner Gagné

63. Petitioner Gagné resides at 4722 Rue Papineau in Lac-Mégantic, Quebec;

64. Petitioner Gagné owns and operates a restaurant and small concert venue, Musi-Café, located at 5078, Rue Frontenac in Lac-Mégantic, Quebec;

65. Petitioner Gagné was working at Musi-Café the night of the Train Derailment. He and his partner, who was 7 months pregnant at the time, left the establishment merely 15-30 minutes before the Train Derailment;

66. As a result of the Train Derailment, Petitioner Gagné suffered many damages, including, but not limited to: the loss of his business and his place of work, the loss of 3 employees who perished in the tragedy, the loss of 12 employees who are currently unemployed and the investments made over the last two years in the renovation of Musi-Café;

67. After tragedy struck, Petitioner Gagné also suffered from a great deal of sadness, anguish, stress and melancholy;

68. Petitioner Gagné will have to completely rebuild his life, including taking all the administrative measures to revive his business, if possible. As a result of the damage done to his place of business and livelihood, he anticipates many financial problems in his future;

69. Petitioner Gagné has also suffered loss of time, inconvenience and stress due to disorganization and disorientation following the events of July 6, 2013;

70. Petitioner's damages are a direct and proximate result of the Respondents' conduct;

71. In consequence of the foregoing, Petitioner is justified in claiming damages;

Petitioner Jacques

71.1 Petitioner Jacques previously resided at 5142, Boulevard des Vétérans, Lac-Mégantic, Quebec which was situated across from the Parc des Vétérans in Lac-Mégantic;

71.2 Petitioner Jacques and his wife escaped from their house mere minutes before a storm sewer full of gasoline exploded in their yard, destroying both his home and his business;

71.3 Had Petitioner Jacques and his wife not escaped when they did, they would have been killed in their home as happened to many of their neighbours;

71.4 Petitioner Jacques' home was a mansion of tremendous historic, cultural and personal value, in addition to its significant commercial real estate value and is irreplaceable;

71.5 Petitioner Jacques' home was also his place of business;

71.6 As a result of the Train Derailment, Petitioner Jacques suffered many damages, including, but not limited to: the loss of his home, the loss of his business establishment, the loss of his furniture and the loss of all personal and business effects which were destroyed when his home exploded;

71.7 Petitioner Jacques also suffered from significant emotional harm as a result of the tragedy, including the loss of many friends and neighbours and a loss of his sense of security;

71.8 Petitioner Jacques' damages are a direct and proximate result of the Respondents' conduct;

71.9 In consequence of the foregoing, Petitioner Jacques is justified in claiming damages;

Petitioner Parent

71.10 Petitioner Parent used to reside at 5060 Boulevard des Vétérans in Lac-Mégantic, Quebec;

71.11 The night of the Train Derailment, Petitioner Parent and his wife were able to escape from the explosions and fire to the safety of their vehicle; however, his home, place of business, furniture and personal effects were all completely destroyed in the Train Derailment and subsequent explosions and fire, as firefighters had to demolish his home to prevent the fire from spreading;

71.12 Petitioner Parent's home was also his place of business;

71.13 As a result of the Train Derailment, Petitioner Parent suffered significant damages, including the loss of his home and personal effects, the loss of his business and his place of work, and related economic losses;

71.14 Petitioner Parent also suffered from significant emotional harm as a result of the tragedy, including the loss of many friends and neighbours and a loss of his sense of security;

71.15 Petitioner Parent`s damages are a direct and proximate result of the Respondents' conduct;

71.16 In consequence of the foregoing, Petitioner Parent is justified in claiming damages;

III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

72. Every member of the group resided in, owned or leased property in or were physically present in Lac-Mégantic, Quebec and suffered a loss of nature or kind resulting directly or indirectly from the Train Derailment;

73. Each member of the class is justified in claiming at least one or more of the following as damages:

a. For physical injury or death, the individuals or their estates may claim at least one or more of the following non-exhaustive list, namely:

i. pain and suffering, including physical injury, nervous shock or mental distress;
ii. loss of enjoyment of life;
iii. past and future lost income;
iv. past and future health expenses which are not covered by Medicare;
v. property damages; and/or
vi. any other pecuniary losses;

b.Those individuals who did not suffer physical injury may claim one or more of the following non-exhaustive list, namely:

i. mental distress;
ii. incurred expenses;
iii. lost income;
iv. expenses incurred for preventative health care measures which are covered by Medicare ;
v. inconvenience;
vi. loss of real or personal property;
vii. property damages causing replacement and/or repairs;
viii. diminished value of real property; and/or
ix. any other pecuniary losses;

c. Family members of those that died or were physically injured may claim one or more of the following non-exhaustive list, namely:

i. expenses reasonably incurred for the benefit of the person who was injured or who has died;
ii. funeral expenses incurred ;
iii. travel expenses incurred in visiting the injured person during his or her treatment or recovery;
iv. loss of income or for the value of services where, as a result of the injury, the family member provides nursing, housekeeping or other services for the injured person; and
v. an amount to compensate for the loss of guidance, care and companionship that the family member might reasonably have expected to receive from the person if the injury or death had not occurred; and/or
vi. any other pecuniary loss;

d. Businesses Owning or Leasing Property and/or Operating in Lac-Mégantic may claim one or more of the following non-exhaustive list, namely:

i. loss of real or personal property ;
ii. property damages causing replacement or and repairs;
iii. loss of income, earnings, or profits;
iv. diminished value of real property; and/or
v. any other pecuniary loss;

74. All of these damages to the Class Members are a direct and proximate result of the Respondents' faults and/or negligence;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

A) The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impractical

75. Petitioners estimate that there are 5,932 persons living in Lac-Mégantic as of 2011. However, Petitioners are unaware of the precise number of persons who, were residing in, owning or leasing property in, or were physically present in Lac-Mégantic and suffered damages arising directly or indirectly from the Train Derailment that took place on July 6, 2013;

76. In addition, given the significant costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the class members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of Respondents would increase delay and expense to all parties and to the court system;

77. These facts demonstrate that it would be difficult or impractical to contact each and every member of the class to obtain mandates and to join them in one action;

78. In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice;

B) The questions of fact and law which are identical, similar, or related with respect to each of the class members with regard to the Respondents and that which the Petitioners wish to have adjudicated upon by this class action

79. Individual questions, if any pale by comparison to the numerous common questions that predominate;

80. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, a single accident and the Respondents' alleged misconduct;

81. The recourse of the Class Members raises identical, similar or related questions of fact or law, namely:

    a.Did the Respondents negligently and/or recklessly cause or contribute to the Train Derailment and the resulting fire, explosion and Shale Liquids spill?

b.Did the Respondents know or should they have known of the risk of the Train Derailment and did they exercise sufficiently reasonable care in order to prevent such an incident from occurring?

c.Did the Respondents properly inspect the Train and its equipment to assure that it was free from defects, in proper working order and fit for its intended purpose and did this cause or contribute to the Train Derailment?

d.Did the Respondents' agents and/or employees commit any faults in the performance of their duties and did this cause or contribute to the Train Derailment?

e.Did the Rail World Respondents promulgate, implement and enforce rules and regulations pertaining to the safe operations of their trains which would have prevented the Train Derailment?

f.Did the Rail World Respondents fail to properly operate and/or maintain the Train in a manner that would have prevented the Train Derailment?

f.1 Did the Oil Respondents, the Oil Producer Respondents, the Lessor Respondents and the CP Rail Respondent fail and/or neglect to exercise reasonable care to ensure that the Shale Liquids were properly and safely transported?

g.In the affirmative to any of the above questions, did the Respondents' conduct engage their solidary liability toward the members of the Class?

h.What is the nature and the extent of damages and other remedies to which the members of the class can claim?

i.Are members of the class entitled to bodily, moral and/or material damages?

j.Are members of the class entitled to aggravated and/or punitive damages?

k.Are the Mises-en-Cause, as the Rail World Respondents' liability insurers, contractually required to pay members of the class for their prejudice, injury and damages?

82. The interest of justice favour that this motion be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

83. The action that the Petitioners wish to institute on behalf of the members of the class is an action in damages;

84. The conclusions that the Petitioners wish to introduce by way of a motion to institute proceedings are:

GRANT the class action of the Petitioners and each of the members of the class;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioners and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

A) The Petitioners request that he be attributed the status of representative of the Class

85. Petitioners are members of the class;

86. Petitioners are ready and available to manage and direct the present action in the interest of the members of the class that they wish to represent and is determined to lead the present dossier until a final resolution of the matter,

the whole for the benefit of the class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec and the Fonds d'aide aux recours collectifs, as the case may be, and to collaborate with their attorneys;

87. Petitioners have the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;

88. Petitioners have given the mandate to their attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

89. Petitioners, with the assistance of their attorneys, are ready and available to dedicate the time necessary for this action and to collaborate with other members of the class and to keep them informed;

90. Petitioners are in good faith and have instituted this action for the sole goal of having their rights, as well as the rights of other class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;

91. Petitioners understand the nature of the action;

92. Petitioners' interests are not antagonistic to those of other members of the class;

B) <u>The Petitioners suggest that this class action be exercised before the Superior Court of Justice in the district of Mégantic</u>

93. A great number of the members of the class reside in the judicial district of Mégantic;

94. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages;

ASCRIBE the Petitioners the status of representatives of the persons included in the class herein described as:

- all persons and entities (natural persons, legal persons established for a private interest, partnerships or associations as defined in article 999 of the Code of Civil Procedure of Quebec) residing in, owning or leasing property in, operating a business in and/or were physically present in Lac-Mégantic [including their estate, successor, spouse or partner, child, grandchild, parent, grandparent and sibling], who have suffered a loss of any nature or kind relating to or arising directly or indirectly from the train derailment that took place on July 6, 2013 in Lac-Mégantic (the "Train Derailment"), or any other group to be determined by the Court;

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

a.Did the Respondents negligently and/or recklessly cause or contribute to the Train Derailment and the resulting fire, explosion and Shale Liquids spill?

b.Did the Respondents know or should they have known of the risk of the Train Derailment and did they exercise sufficiently reasonable care in order to prevent such an incident from occurring?

c.Did the Respondents properly inspect the train and its equipment to assure that it was free from defects, in proper working order and fit for its intended purpose and did this cause or contribute to the Train Derailment?

d.Did the Respondents' agents and/or employees commit any faults in the performance of their duties and did this cause or contribute to the Train Derailment?

e.Did the Rail World Respondents promulgate, implement and enforce rules and regulations pertaining to the safe operations of their trains which would have prevented the Train Derailment?

f.Did the Rail World Respondents fail to properly operate and/or maintain the Train in a manner that would have prevented the Train Derailment?

f.1 Did the Oil Respondents, the Oil Producer Respondnts, the Lessor Respondents and the CP Rail Respondent fail and/or neglect to exercise reasonable care to ensure that the Shale Liquids were properly and safely transported?

g.In the affirmative to any of the above questions, did the Respondents' conduct engage their solidary liability toward the members of the Class?

h.What is the nature and the extent of damages and other remedies to which the members of the class can claim?

i.Are members of the class entitled to bodily, moral and/or material damages?

j.Are members of the class entitled to aggravated and/or punitive damages?

k.Are the Mises-en-Cause, as the Rail World Respondents' liability insurers, contractually required to pay members of the class for their prejudice, injury and damages?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT the class action of the Petitioners and each of the members of the class;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioners and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

DECLARE that all members of the class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

ORDER the publication of a notice to the members of the group in accordance with article 1006 C.C.P. within sixty (60) days from the judgment to be rendered herein in LA PRESSE (national edition), LE DEVOIR, LA TRIBUNE, L'ÉCHO DE FRONTENAC and the LE JOURNAL DE QUÉBEC;

ORDER that said notice be available on the Respondents' websites with a link stating "Notice to all persons and entities residing in, owning or leasing property in, operating a business in and/or were physically present in Lac-Mégantic and who have suffered a loss relating to the Train Derailment that took place on July 6, 2013";

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

THE WHOLE with costs, including all publications fees.

Lac-Mégantic, November 1, 2013

(S) Daniel E. Larochelle

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ME DANIEL E. LAROCHELLE
Attorney for the Petitioners

(S) Jeff Orenstein

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CONSUMER LAW GROUP INC.
Per: Me Jeff Orenstein
Attorneys for the Petitioners